

IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. WJC No.835 of 2008
PINTU YADAV
Versus
STATE OF BIHAR & ORS

For the petitioner: Mr. Chandra Mohan Jha, Advocate
For the respondents : Mr. Prabhat Kumar, JC to GA - III

P R E S E N T

Hon'ble the Chief Justice
And
Hon'ble Mr. Justice Kishore K. Mandal

Dated, the 7th November, 2008

The petitioner seeks to impugn the order of detention dated 16th July, 2008, whereby the State Government in exercise of power conferred under section 21 of the Bihar Control of Crimes Act, 1981, confirmed the order of detention dated 26th May, 2008 passed by the District Magistrate, Saharsa. The petitioner also seeks to impugn the initial order of detention dated 26th May, 2008 passed by the District Magistrate, Saharsa.

2. The only contention put- forth by the counsel for the petitioner in assailing the order dated 16th July, 2008 passed by the State Government is that under section 12(2) of the Bihar Control of Crimes Act, 1981, the order of detention in the first instance cannot exceed three months whereas vide order dated 16th

July, 2008, the detention of the petitioner has been ordered until 4th June, 2009 i.e., for one year.

3. We may immediately observe that the contention of the counsel for the petitioner lacks substance.

4. Section 12 of the Bihar Control of Crimes Act, 1981 reads thus:

“Power to make order detaining certain persons

– (1) The state Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and there is reason to fear that the activities of anti-social elements can not be prevented otherwise than by the immediate arrest of such person, make an order directing that such anti-social element be detained.

(2) If, having regard to the circumstance prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate, the State Government is satisfied that it is necessary so to do, it may by an order in writing direct, that during such period as may be specified in the order, such District Magistrate may also, if satisfied as provided in sub-section (1) exercise the powers conferred upon by the said sub-section:

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made by District Magistrate, he shall forthwith report the fact to the State Government together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter and no such order shall remain in force for more than 12 days after the making thereof unless, in the meantime, it has been approved by the State Government.

Provided that where under section 17 the grounds of detention are communicated by the officer

making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that, for the words “twelve days”, the words “fifteen days” shall be substituted.”

5. According to this section, that provides for preventive detention, the power is vested in the state government and in certain circumstances upon the District Magistrate. We need not to go into the conditions that must exist before the decision is arrived at by the state government or the District Magistrate before passing the order of preventive detention. Suffice it to say, that if an order of preventive detention is passed by the District Magistrate, the life of such order cannot exceed for more than twelve days unless in the meantime it has been approved by the State Government. It is only where the state government, upon being satisfied of the conditions provided in sub-section (1), passes an order of preventive detention then such order of the State Government in the first instance cannot exceed three months but duration of such order may be extended by the State Government from time to time not exceeding three months at any one time. In so far as the present case is concerned, it is an admitted position that the District Magistrate, Saharsa in exercise of power conferred upon him under section 12(2) of the Bihar Control of Crimes Act, 1981 vide his order dated 22nd May, 2008, ordered the detention of the petitioner on the grounds set

out therein. It further transpires that the preventive detention order passed by the District Magistrate, Saharsa on 26th May, 2008 was approved by the State Government within the statutory period of 12 days i.e., on 4th June, 2008. After approval of the detention order by the State Government on 4th June, 2008, the matter was referred to the Advisory Board under section 19 of the Act, 1981. The Advisory Board considered the representation made by the petitioner and rejected the same and it was then that the State Government confirmed the order of detention under section 21(1) read with section 22 of the Act, 1981, with a direction to detain the petitioner for a maximum period of twelve months upto 4th June, 2009.

6. We find that the constitutional and statutory safeguards have been fully adhered to and there is no violation of section 12(2) of the Act, 1981, as the initial order of detention was passed by the District Magistrate and before expiry of twelve days from issuance of that order, the order of detention has been approved by the State Government.

7. There is no merit in the contention of the counsel of the petitioner that the order of detention passed by the State Government could not have exceeded in the first instance to three months as the initial order was not the State Government but by the District Magistrate.

8. Writ petition is devoid of any substance and it is dismissed accordingly.

R .M. Lodha, CJ.

Kishore K. Mandal, J.

Neyaz/-

